

Exhibit 1

Confidential – Subject to The Protective Order
Richard Markowitz – April 8, 2021

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 CASE NO. 18-MD-2865 (LAK)

4 IN RE:)
5)
6)
7)
8)
9)

CUSTOMS AND TAX ADMINISTRATION OF
THE KINGDOM OF DENMARK
(SKATTEFORVALTNINGEN) TAX REFUND
SCHEME LITIGATION)

This document relates to case nos.
19-cv-01783; 19-cv-01788; 19-cv-01794;)
19-cv-01798; 19-cv-01918)

10
11
12 C O N F I D E N T I A L

13 SUBJECT TO THE PROTECTIVE ORDER
14
15

16 REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL

17 EXAMINATION OF

18 RICHARD MARKOWITZ

19 DATE: April 8, 2021
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21
22
23
24

25 REPORTED BY: MICHAEL FRIEDMAN, CCR

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1 TRANSCRIPT of the videotaped deposition
2 of the witness, called for Oral Examination in the
3 above-captioned matter, said deposition being taken
4 by and before MICHAEL FRIEDMAN, a Notary Public and
5 Certified Court Reporter of the State of New Jersey,
6 via WEBEX, ALL PARTIES REMOTE, on April 8, 2021,
7 commencing at approximately 10:04 in the morning.

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1 R I C H A R D M A R K O W I T Z,
2 called as a witness, having been first
3 duly sworn according to law, testifies as follows:
4
5
6

7 EXAMINATION BY MR. WEINSTEIN:

8 Q Good morning, Mr. Markowitz.

9 MR. BONGIORNO: Marc, before we get
10 going, I just wanted to mention that
11 Mr. Markowitz is diabetic and we're
12 going to have to just keep a close eye
13 on his levels. So every, I don't know,
14 45, 50, 55 minutes or so, we're just
15 going to ask that he check it, see
16 whether or not he needs a break or a
17 snack or anything. But I didn't want
18 to -- I'm obviously trying to do it in a
19 way that doesn't interrupt the flow of
20 the deposition. I just wanted to let
21 you know.

22 MR. WEINSTEIN: Right. Thank you.
23 I appreciate that, and we'll accommodate
24 any needs there.

25 Q Mr. Markowitz, my name is Marc

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1 founding.

2 Q Okay. As of 2012, what were the
3 ownership interests of the principals of
4 Argre?

5 A 25 percent each.

6 Q Okay. Did that remain the same
7 through 2015?

8 A Yes.

9 Q Did you or Argre invest in any
10 dividend arbitrage opportunities through
11 Mr. Raffi?

12 A No.

13 Q Why not?

14 A He didn't offer us any investment
15 opportunities.

16 Q And for what reason did he bring
17 the strategy to your attention if not to
18 offer you an investment opportunity?

19 A To inform and educate us about the
20 opportunities.

21 Q And did there come a time that you
22 did invest in a dividend arbitrage strategy?

23 A Yes.

24 Q When was the first time that you
25 invested in such a strategy?

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1 A 2010.

2 Q Can you describe what the strategy
3 was in 2010?

4 MR. BONGIORNO: Objection.

5 A I invested, or my partners and I
6 invested indirectly into a fund that had been
7 established in Ireland.

8 Q Is that the Broadgate Fund?

9 A Yes.

10 Q Who brought the Broadgate Fund
11 investment opportunity to your attention?

12 A Solo Capital.

13 Q What was Solo Capital?

14 A A financial firm that served as the
15 funds investment manager.

16 MR. BONGIORNO: Can we pause for a
17 minute, Marc? I think Mr. Markowitz
18 would like to take a brief break.

19 Q Mr. Markowitz, do you need a break?

20 THE WITNESS: Yes.

21 THE VIDEOGRAPHER: Stand by. The
22 time is 10:18 a.m. and we're going off
23 the record.

24 (Brief recess taken.)

25 THE VIDEOGRAPHER: Stand by. The

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1 time is 10:33 a.m. and we're back on
2 record.

3 Q Mr. Markowitz, was Solo Capital a
4 financial firm that you had been familiar
5 with based on your experience in the
6 industry?

7 A No.

8 Q Okay. And how did you first hear
9 about Solo Capital?

10 A They were introduced to us by Rob
11 Klugman.

12 Q Who was Rob Klugman?

13 A A friend and professional associate
14 that I had known for a number of years.

15 Q What did Mr. Klugman tell you about
16 Solo Capital before he introduced them to
17 you?

18 A That they were a firm in London,
19 acting as an investment manager for a fund
20 looking to do dividend arbitrage
21 transactions.

22 Q At the time that Mr. Klugman made
23 the introduction, did you know if he had any
24 prior experience with Solo Capital?

25 A I was not aware of it one way or

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1 forward basis the sale of those stocks, and
2 therefore make money in the transaction.

3 Q What did you understand would cause
4 that pricing difference for which you can
5 make money?

6 A Differences in the pricing of the
7 securities as well as differences in the
8 value of the securities to a particular buyer
9 or seller.

10 Q What did you understand would cause
11 the difference in the value of the securities
12 for particular buyers or sellers?

13 A We understood that this fund
14 established in Ireland would be able to take
15 advantage of certain tax treaty benefits when
16 it owned shares of certain companies in
17 certain jurisdictions and received dividends
18 from those companies in those jurisdictions,
19 and, through the double taxation treaty, have
20 a preferential tax treatment versus other
21 investors.

22 Q Did you have an understanding of
23 what countries would be involved in order to
24 obtain that tax preferential treatment?

25 A According to the folks at Merrill

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1 Lynch and Solo Capital, it would be the tax
2 treaty between Ireland and Germany.

3 Q Okay. So this particular
4 investment, the fund was going to focus on
5 purchasing securities issued in Germany.

6 Is that right?

7 A Yes.

8 Q Do you see down below, on the same
9 page, in the second paragraph under
10 "Investment Policies," it says that "the
11 investment manager will, at all times, seek
12 to maintain an overall market neutral
13 portfolio under which the fund's investment
14 returns are intended to be independent of
15 overall movements in equity markets."

16 Was that consistent with your
17 understanding?

18 A Yes.

19 Q Okay. Can you explain what that
20 means to you?

21 A If you were an owner of securities,
22 you are at risk for movements in the price of
23 those securities that relate to overall
24 movements in a stock market or the price of
25 those securities in that market. And the

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1 large international banks that participated
2 in such transactions in order to learn about
3 it, and were able to get knowledge about the
4 importance of securities lending to those
5 transactions.

6 Q And what was your understanding of
7 the importance of securities lending to those
8 transactions?

9 A No different than the importance of
10 securities lending to the functioning of the
11 financial markets. Securities lending allows
12 investors to acquire securities through
13 borrow and allows investors to lend out
14 securities in exchange for cash and other
15 collateral on which they can earn a return or
16 receive cash in return.

17 Q Did you have an understanding of
18 how the Broadgate Fund was going to employ
19 securities lending arrangements as part of
20 the strategy?

21 A Not specifically.

22 Q Three paragraphs below, it says,
23 "The fund is expected to commence trading
24 with leverage of 20 times the net asset value
25 of the fund."

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1 Did you understand what that meant?

2 A Yes.

3 Q And what did it mean to trade "with
4 leverage of 20 times the net asset value?"

5 A In our discussions with Merrill
6 Lynch, which was acting as the prime broker
7 for the fund, they explained to us that we
8 would be able to borrow money from Merrill
9 Lynch. Merrill Lynch would likely use the
10 securities that they held on behalf of the
11 fund and achieve financing through stock
12 lending.

13 And if the fund had ten dollars of
14 equity, Merrill Lynch would lend 20 times
15 that, or \$200, in order to increase its
16 purchase power.

17 Q Was investing with the use of
18 leverage something you were familiar with
19 from your time in the financial industry?

20 A Yes.

21 Q And did 20 times leverage seem like
22 a reasonable amount given your experience in
23 the financial industry?

24 MR. BONGIORNO: Objection.

25 A No. In my experience working on

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1 capital for this investment?

2 A I believe so.

3 Q Did you end up investing in the
4 Broadgate Fund?

5 A We worked with another corporate
6 client of ours who became the investor, or
7 one of the investors in the fund, and I
8 provided capital to that corporate client.
9 So my investment personally was indirect to
10 the fund.

11 Q Were you the only investor into the
12 corporate client for this purpose?

13 A No.

14 Q Were other Argre principals?

15 A Yes.

16 Q Okay. As a group, how much did you
17 put up in capital for the corporate client to
18 invest in the Broadgate Fund?

19 A I'm sorry. Can you just clarify
20 that question, repeat it one more time?

21 Q Sure.

22 As a group of individuals, how much
23 capital did you put up for the corporate
24 client to invest in the Broadgate Fund?

25 MR. BONGIORNO: The group of Argre

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1 principals, Marc?

2 MR. WEINSTEIN: Yes.

3 A Thank you. That was the
4 clarification I was in search of.

5 I don't recall specifically, but it
6 was probably close to \$10 million.

7 Q And that was the initial capital
8 for this investment?

9 A I'm sorry. It again glitched out.

10 Q Sure.

11 Was the 10 million the initial
12 capital for the investment?

13 A Assuming it was 10 million, that
14 was the amount that the Argre principals
15 provided to the client of ours that added
16 their own funds, and that became the
17 investment into the Broadgate Fund, if -- I
18 think that was the question you were asking,
19 perhaps.

20 Q Yes. And combined with the amount
21 that the corporate client put up, how much in
22 total did the corporate client invest into
23 the Broadgate Fund?

24 A In total, I believe it was
25 approximately \$50 million.

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1 Q How did that investment do?

2 A We all received our money back with
3 a profit.

4 Q And how much profit?

5 A Twenty to 25 percent for a
6 one-month investment.

7 Q All right. Did you have an
8 understanding of how the Broadgate Fund
9 generated 20 to 25 percent profit in a month?

10 A Yes.

11 Q What -- what did it do to generate
12 that profit in a month?

13 A Buy securities, receive dividends
14 on those securities, hedge those securities,
15 finance those securities with 20 times
16 leverage, and associated with the dividend
17 payments, apply for and receive rebates of
18 taxes that were withheld on those dividend
19 payments.

20 Q For that investment, how
21 was -- withdrawn.

22 Was the 20 times leverage provided
23 by Merrill Lynch in this investment?

24 A Yes.

25 Q And do you know what kind of

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1 financial instrument they used to effect that
2 leverage or financing?

3 A They loaned money to the fund in a
4 margin account.

5 Q What's a "margin account?"

6 A An account offered by a brokerage
7 firm that allows you to borrow money from the
8 firm in order to make investments in
9 securities.

10 Q All right. In order to have such
11 an account, does the investor need to put a
12 certain amount into the account?

13 A It depends on the requirements of
14 the brokerage firm.

15 Q Okay. And do you know, for the
16 Broadgate Fund, how much, if anything, the
17 Broadgate Fund had to put into an account at
18 Merrill Lynch in order to get the 20 times
19 leverage?

20 A I don't believe there was a
21 minimum. But if the fund put in one dollar,
22 it would receive \$20 of leverage. If the
23 firm put in a million dollars, it would have
24 received \$20 million of leverage.

25 Q I see. So, in order to obtain

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1 Yes.

2 Q Okay. And was this a -- a
3 memorandum of understanding as between Solo
4 Capital, Argre, and STOR Capital?

5 A Yes.

6 Q What was STOR Capital Consulting
7 LLC?

8 A A business owned and operated by
9 Robert Klugman.

10 Q Do you know what that business did?

11 A I assume it provided consulting
12 services based on its name, and that Rob used
13 that firm to advise and consult in
14 transactions.

15 Q Okay. And so, because the name
16 "consulting" is in the LLC's name, you're
17 making the assumption that that's the service
18 that it provided?

19 A And my experience with Rob in
20 receiving invoices or services from
21 STOR Capital.

22 Q Okay. For what purposes did
23 STOR Capital issue invoices to you?

24 A Pursuant to this memorandum of
25 understanding, which spelled out certain

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1 fees, as well as a finder's fee that we
2 agreed to pay to STOR Capital and Rob Klugman
3 for transactions that we did with respect to
4 dividend arbitrage transactions that he
5 helped us with.

6 Q But what was the purpose of this
7 memorandum of understanding?

8 A As it states, to set forth the
9 terms and conditions that we agreed to to try
10 to have a way of working on transactions
11 together on a going-forward basis.

12 Q Okay. And specific to dividend
13 arbitrage?

14 A This defines it as "equity
15 arbitrage," but my understanding was the two
16 terms were one and the same.

17 Q Okay. If you look on Page 3, the
18 "Fees and Profit-Sharing" section?

19 A Yes.

20 Q Were the percentage splits
21 negotiated?

22 A I'm going to ask you to repeat
23 that, Mr. Weinstein.

24 Q Sure.

25 Were the percentage splits of the

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1 transaction.

2 Q Okay. When you say "additional,"
3 additional to what?

4 A Additional to our original
5 Broadgate transaction; one other transaction.

6 Q So did these profit-sharing splits
7 apply to the Broadgate transaction?

8 A Yes.

9 Q Okay. So for the Broadgate deal,
10 any profits made went 61 percent to Argre, as
11 between the parties to this agreement?

12 A Approximately, yes.

13 Q Okay. What was the other deal that
14 was executed pursuant to this agreement?

15 A A dividend arbitrage transaction in
16 2011.

17 Q Who was involved in that dividend
18 arbitrage transaction?

19 A We worked with a not-for-profit
20 entity located here in the U.S. that became
21 an investor and owner of securities.

22 Q Was that the Ezra Academy of
23 Queens?

24 A Yes.

25 Q How were you introduced to the Ezra

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1 Academy of Queens?

2 A Through a law firm that we were
3 working with previously, and at the time.

4 Q Which law firm?

5 A Kaye Scholer.

6 Q What services were Kaye Scholer
7 providing to you and Argre at the time?

8 MR. BONGIORNO: Object to the form.

9 A Can you repeat the question,
10 please?

11 Q What services was Kaye Scholer
12 providing to you and Argre at the time?

13 A A wide variety of services, both
14 professional -- as professionally related to
15 potential transaction and to some of us
16 personally.

17 Q Okay. What were the circumstances
18 of Kaye Scholer introducing Ezra Academy of
19 Queens to the Argre principals?

20 A We became aware that a U.S.
21 not-for-profit organization would have a
22 different and better tax profile for certain
23 dividend arbitrage transactions, better, more
24 efficient than an entity located in Ireland.
25 And Solo had identified one or more parties

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1 that would -- they would work with, again, as
2 investment advisor.

3 And we wanted to identify a
4 not-for-profit organization in the U.S. and
5 we asked our attorneys if they were familiar
6 with any who might be able to participate in
7 this transaction along with us.

8 Q Okay. So at the time you and your
9 Argre partners were looking to do additional
10 dividend arbitrage trading?

11 A Yes.

12 Q Okay. And you understood that a
13 charitable organization in the United States
14 or a not-for-profit would have a better tax
15 preference than the Broadgate Fund had had in
16 Ireland?

17 A Well, the tax treaties between the
18 United States and Germany provided different
19 rules for withholding tax refunds and
20 reclaims and payments than the treaty between
21 Ireland and Germany.

22 Q Okay. And so your understanding
23 was that under the U.S. German tax treaty, a
24 not-for-profit in the United States could get
25 a bigger refund back, percentage-wise, than

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1 actually didn't hear anything you just said.

2 Q Sure.

3 In the first e-mail in this
4 document, you're forwarding to a number of
5 people a transactional diagram for the
6 Ezra Academy transaction.

7 Is that right?

8 A Yes.

9 Q All right. And is that -- if you
10 turn to the next page, is that the diagram?

11 A Yes.

12 Q In the diagram, there's a box for
13 the charitable foundation, and it's with an
14 arrow to the custodian. And it says, next to
15 the arrow, "Account opened with custodian and
16 funds invested into account."

17 Do you know, as part of the
18 transaction, were funds invested into the
19 account at the custodian on behalf of the
20 charitable organization?

21 A Are you speaking about the
22 custodian listed in this box diagram?

23 Q Well, ultimately, was there a
24 custodian for this transaction?

25 A Yes.

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1 Q Which entity served as custodian?

2 A Deutsche Bank.

3 Q Okay. And so, if we replace SEI
4 with Deutsche Bank in this diagram, did the
5 Ezra Academy deposit funds to invest into the
6 account at Deutsche Bank?

7 A Yes.

8 Q How much money?

9 A I believe approximately
10 \$40 million.

11 Q Do you know how Ezra Academy
12 sourced that money?

13 A Through a total return swap with
14 investors.

15 Q What is a "total return swap?"

16 A I'm sorry. Can you repeat that?

17 Q What's a "total return swap?"

18 A It has all different uses. It's
19 basically two parties agreeing to exchange
20 funds or securities, sometimes fixed for
21 floating, sometimes floating for floating.

22 So it can run the gamut as a common
23 transaction used in the financial world.

24 Q Who were the investors who entered
25 into a total return swap with the Ezra

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1 Academy?

2 A It was a corporate client of ours.

3 Q And "ours," you mean Argre?

4 A Yes.

5 Q And which corporate client?

6 A I don't recall the exact name of
7 the company.

8 Q Did the Argre principals provide
9 any of that funding?

10 A Yes, although I don't know if we
11 were parties to the total return swap or, as
12 in Broadgate, provided funding to the
13 corporate client who then entered into the
14 total return swap.

15 So it was either direct or
16 indirect.

17 Q Okay. Without, you know, putting
18 titles on it, where did the 40 million come
19 from?

20 A The total return swap.

21 Q Okay. But who — from whose bank
22 account did \$40 million leave in order for
23 the Ezra Academy to deposit it into the
24 custodian's account?

25 MR. BONGIORNO: Objection.

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1 A The money was deposited by Ezra.

2 Q Okay. And did Ezra Academy have
3 \$40 million prior to entering this deal?

4 A I don't know.

5 Q Okay. It didn't put up its own
6 40 million.

7 Is that right?

8 A Again, it entered into a total
9 return swap which legally gave it
10 \$40 million. So its own money did -- was
11 used because of the nature of the total
12 return swap.

13 Q Where did the 40 million come from
14 in order to transact in the total return
15 swap?

16 A The Federal Reserve Bank who prints
17 the money, or the U.S. Treasury.

18 Q Okay. You didn't call up the Fed
19 and say "fund this transaction," right? It
20 came from someone's bank account?

21 A Again, you asked the question. I
22 don't mean to say this, but you asked the
23 question, "where did the money come from?"

24 The legal transaction, total return
25 swap, provided money to Ezra, which legally

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1 became its money that it used to invest in
2 the transaction.

3 That's how I understood and
4 continue to understand how total return swaps
5 work.

6 Q Who was the counterparty to Ezra in
7 the total return swap?

8 A The corporate client we've been
9 speaking about, and perhaps some of us
10 individually, as we discussed a few moments
11 ago.

12 Q Okay. How much did some of you
13 individually invest into that total return
14 swap?

15 A Either directly or indirectly,
16 perhaps 10 to \$15 million.

17 Q Okay. And the rest was funded by
18 the corporate client?

19 A Yes.

20 Q Do you know where the corporate
21 client got the 25 to 30 million to fund that
22 investment?

23 A Its bank account.

24 Q Okay. But you don't remember what
25 client that is?

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1 A I don't remember the name of the
2 client, no.

3 Q Okay. So the money that went into
4 the Deutsche Bank custodial account from Ezra
5 came from a total return swap where some of
6 the Argre principals and Argre corporate
7 client put the money into that deal.

8 Is that right?

9 A No.

10 Q Okay. How's that wrong?

11 A Ezra deposited money into its
12 account at Deutsche Bank. Ezra obtained the
13 money through -- by entering into a total
14 return swap with a corporate client and Argre
15 principals.

16 Q Okay. Were you one of the Argre
17 principals that put money into that
18 transaction?

19 A Yes.

20 Q Okay. And how much did you put up?

21 A Around \$2 million.

22 Q Do you know how much leverage was
23 being provided by Deutsche Bank, if any, on
24 the 40 million that came in from Ezra
25 Academy's account?

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1 A I don't recall.

2 Q Do you have a ballpark figure that
3 you recall?

4 A I don't believe it was very much
5 leverage.

6 Q And by "not very much," do you
7 mean -- what, less than 20 percent?

8 A Yes.

9 Q Okay. Less than 10 percent?

10 A I don't recall.

11 Q Was -- there's a reference on this
12 diagram to a sub-custodian.

13 Do you know if a sub-custodian was
14 used in the transaction?

15 A Not that I'm aware of.

16 Q Okay. And so there's then an arrow
17 from the sub-custodian to exchanges and
18 brokers where it says "delivery of shares and
19 payments of cash."

20 In the actual transaction, would
21 that arrow be from Deutsche Bank, as
22 custodian, to the exchanges and brokers?

23 A Yes.

24 Q Okay. And was it your
25 understanding that when the transactions went

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1 (Brief recess taken.)

2 THE VIDEOGRAPHER: Stand by. The
3 time is 1:01 p.m. and we're back on
4 record.

5 Q Mr. Markowitz, can you turn to
6 Exhibit 1744?

7 Mr. Shah starts this e-mail chain
8 by informing you and Matt Stein that "SEI
9 called to say that BBH cannot process our
10 business."

11 Is this in connection with the
12 dividend arbitrage strategy?

13 A Yes.

14 Q Okay. SEI is what entity?

15 A I don't recall what the initials
16 stand for.

17 Q Okay. BBH is Brown Brothers
18 Harriman?

19 A Yes.

20 Q Okay. That's a well-known
21 financial institution that you were familiar
22 with from your time in the financial
23 industry?

24 A I was aware of the firm, yes.

25 Q Okay. And he goes on to say that

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1 they have credit exposure to the trades at
2 the time the trades are instructed, and
3 again, that BBH believed they have credit
4 exposure to the foundations to the value of
5 the purchases.

6 Do you understand what "credit
7 exposure" is being referred to there?

8 A No.

9 Q Do you know what role BBH was to
10 serve in the transaction?

11 A (Witness reviewing.)

12 Either as a custodian or a
13 sub-custodian.

14 Q Okay. There is an e-mail, if you
15 look at the page just prior, at the bottom,
16 an e-mail from Mr. Klugman.

17 Do you see that?

18 A If you could give me a minute,
19 Mr. Weinstein, I would like to read the
20 entire chain of e-mails so I have everything
21 in context?

22 Q Sure.

23 A (Witness reviewing.)

24 Okay.

25 Q Okay. So if you look at the bottom

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1 of the second page, there's an e-mail from
2 Mr. Klugman.

3 Do you see at the very bottom of
4 the page, he says, "If there is any real
5 credit risk, it is hard to imagine another
6 custodian taking it?"

7 A (Witness reviewing.)

8 I see those words, yes.

9 Q Okay. And is this in the context
10 of Solo is trying to get a custodian onboard
11 to serve in that role for the dividend
12 arbitrage trades?

13 A I believe they were trying to have
14 Brown Brothers Harriman and SEI work together
15 in a trade. And the issue became, as I read
16 this entire e-mail, the relationship between
17 the two and how each accounted for their
18 securities and cash accounts.

19 Q And -- but where he says that "it's
20 hard to imagine another custodian taking it
21 if there's any real credit risk," is it your
22 understanding that Solo is searching here for
23 a custodian to be part of this trading
24 strategy?

25 A Solo's role and responsibility once

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1 we signed an MOU was to identify
2 counterparties to the trade; prime brokers,
3 custodians, all those parties. And that's
4 what they were doing.

5 Q Okay. And as part of that role,
6 the context here is searching for a custodian
7 to fit in the -- in the trading.

8 Correct?

9 A A custodian who could handle
10 securities and futures transactions and
11 potentially provide financing, yes.

12 Q All right. And is it fair to say
13 that Brown Brothers Harriman never ended up
14 serving in that role for the dividend
15 arbitrage strategy that you were involved
16 with?

17 A That's correct.

18 Q All right. And if you turn to the
19 first page, at the very top, you see Sanjay
20 Shah provides an update?

21 A Yes.

22 Q And do you see the second bullet
23 says, "The account rep then suggested that
24 the management still wouldn't approve the
25 activity due to, in quotes, their concerns of

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1 the arbitrage nature of our model, and that
2 this is not a core business for them. "

3 Do you see that?

4 A Yes.

5 Q And did you have any discussions
6 with Mr. Shah about the concerns of the
7 arbitrage nature of the model?

8 A I don't recall if we had any phone
9 conversations after receiving this e-mail.

10 Q Okay. Did you have an
11 understanding of what BBH's concerns were
12 about the arbitrage nature of the model?

13 A That it was a dividend arbitrage
14 transaction.

15 Q And why would that -- if that was
16 done in the market by a lot of financial
17 institutions, why was that a concern for
18 them? What did you understand?

19 A I never had any discussions with
20 Brown Brothers Harriman, so I can't speak to
21 their decision-making.

22 Q Okay. The next bullet says, "We
23 suspect that senior management rejected the
24 trade on reputational grounds and the credit
25 issue was a smoke screen. "

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1 Do you know what reputational
2 grounds Mr. Shah was referring to that senior
3 management at BBH had?

4 A No.

5 Q Do you have any understanding of
6 why senior management at a financial
7 institution would have had reputational
8 concerns getting involved in this
9 transaction?

10 A Yes.

11 Q And what were the reputational
12 concerns you were aware of?

13 A Well, from my experience, primarily
14 at Goldman Sachs and elsewhere, a firm always
15 looks at transactions, no matter how simple
16 or complex, and analyzes all different types
17 of risks, including legal risks, making sure
18 the transactions comply with the laws, and
19 also what is generally referred to as
20 reputational risk. I will give you an
21 example.

22 When I was at Goldman Sachs, we
23 purchased three different 747-400 aircraft
24 for about \$500 million, each one put in a
25 separate company. The chairman of the firm

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1 A I believe it was in the first or
2 second quarter -- early second quarter of
3 2012, after we were working with some other
4 investment managers on potentially looking at
5 Belgian dividend arbitrage trades.

6 Q Okay. Did you end up working with
7 other investment managers on those kind of
8 trades?

9 A Yes.

10 Q Other than Solo Capital, what other
11 investment managers did you end up working
12 with on dividend arbitrage trades?

13 A A firm called Duet Capital
14 Management, I believe the name was.
15 I recall them as Duet.

16 Q Okay. Was Mr. Shah affiliated --
17 let me start over.

18 Was Mr. Shah affiliated with Duet?

19 A Not that I was aware of.

20 Q Okay. Did you end up making any
21 investments with Duet?

22 A We made investments or participated
23 in investments in which Duet acted as an
24 investment manager.

25 Q Okay. And by "we," who do you

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1 mean?

2 A The principals of Argre.

3 Q All right. Did the principals of
4 Argre provide any capital for that
5 investment?

6 A Yes.

7 Q How much?

8 A I believe it was under a million
9 dollars.

10 Q Do you know how much leverage was
11 employed for that investment?

12 A I don't recall the specific amount,
13 but it was well in excess of 20 times.

14 Q And what does "well in excess"
15 mean?

16 A It may have supported purchases of
17 two or three hundred million dollars worth of
18 securities. I'll let you do that math
19 because you promised me you would do some
20 math during the day.

21 Q I'm going to hold off for now. But
22 I mean, when you're talking about 200 million
23 on a one million investment, that's 200 times
24 leverage.

25 Correct?

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1 A Yes.

2 Q All right. That much I could do.

3 Had you ever heard of Duet Capital

4 Management before this deal that we're

5 talking about now?

6 A Yes.

7 Q In what context?

8 A I was aware that they managed one

9 or more hedge funds or hedge fund

10 investments, and was aware of some of those

11 investments into U.S. funds in the United

12 States. And then we learned that they also

13 had a division that was working on dividend

14 arbitrage transactions.

15 Q Okay. How long did you continue to

16 trade with them as your investment manager?

17 A I'm sorry. Can you repeat that

18 question?

19 Q How long did the Argre principals

20 continue to trade with Duet as the investment

21 manager?

22 A We started working with Duet on a

23 variety of structures, I believe in 2011,

24 perhaps late 2011. And they -- their job was

25 to identify prime brokers or custodians, and

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1 we worked extensively with our law firm,
2 reviewed a lot of documentation, negotiated
3 documentation with prime brokers and other
4 parties. And ultimately, the transaction did
5 not go forward in 2011.

6 And I believe we resurfaced it in
7 2012 with other parties. And ultimately we
8 did a transaction with -- with Duet assisting
9 as an investment advisor -- I'm sorry,
10 investment manager, I believe in 2013.

11 Q Was that transaction a dividend
12 arbitrage transaction?

13 A Yes.

14 Q Okay. And is that the one where
15 you invested a million dollars or so, and
16 they used two hundred to three hundred times
17 leverage?

18 A Yes.

19 Q Okay. Who else was involved in
20 that deal?

21 A My fellow partners at Argre.

22 Q Was Solo involved?

23 A No.

24 Q Who was the custodian?

25 A I believe it was ED&F Man.

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1 Q Did that investment generate any
2 profits to the Argre principals?

3 A It generated profits to the
4 investor in the trade, and through, I
5 believe, a total return swap or other
6 structure worked on with our lawyers, Argre
7 principals received profit as well.

8 Q How much?

9 A Under \$2 million.

10 Q Is that on top of the one million
11 that was put up or is that everything that
12 you received in return?

13 MR. BONGIORNO: Objection.

14 A I believe that was on top of what
15 we put up.

16 Q Okay. So you put up approximately
17 a million, and ultimately got back somewhere
18 under three million?

19 A Including the initial capital? Is
20 that what you're saying?

21 Q Did you get your initial capital
22 back out?

23 A Yes.

24 Q Yes, then including that.

25 A Yes.

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1 Q Okay. How long did you do that
2 type of trading with Duet Capital Management
3 as the investment advisor?

4 A Well, as I said, we worked with
5 them for a long period of time, had a couple
6 of fits and starts as they were doing their
7 business, their job. And we did this one
8 series of trades in 2013 through a dividend
9 season.

10 Q I see. With what country?

11 A The United States and Belgium.

12 Q Okay. So there were Belgian shares
13 and there was a tax reclaim filed with
14 Belgium?

15 MR. BONGIORNO: Objection.

16 A No.

17 Q Okay. Was the investor Ezra
18 Academy?

19 A No.

20 Q Who was the investor?

21 A I believe it was Mill River Capital
22 Pension Plan.

23 Q Okay. Is that a pension plan
24 associated with Adam LaRosa?

25 A Yes.

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1 involved a foreign government and the tax
2 authorities there.

3 Q Okay. And it turned out that
4 Macquarie also passed on the opportunity.

5 Correct?

6 A Excuse me?

7 Q It turned out that Macquarie also
8 passed on getting involved in this
9 opportunity?

10 A (Witness reviewing.)

11 "Macquarie are considering
12 providing leverage. But they would require
13 more than half of the P&L as a fee."

14 I assume we would not have accepted
15 those terms.

16 Q Okay. Why would you not accept the
17 term where another party makes half the
18 fee -- half the P&L as a fee? Yeah, I'll
19 start again.

20 Why would you -- why would you not
21 accept terms where another party in the
22 transaction is earning more than half the P&L
23 as a fee?

24 A Our experience with the dividend
25 arbitrage trades and knowledge of the market,

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1 the first production in profit results in the
2 trading level of the shares. We spoke about
3 that earlier.

4 And typically, that would be 50-50
5 with the seller of the shares. And so,
6 already the buyer of the shares is left with
7 50 percent based on the market trading level.

8 And then we were paying fees to a
9 custodian or prime broker. We were paying
10 fees to brokerage firms, and we were paying a
11 34 percent fee to Solo Capital.

12 If the prime broker wanted to take
13 half of what we were already left with, we
14 felt we could do better.

15 Q Okay. Did you end up doing better?

16 A Yes.

17 Q And who ultimately was Solo Capital
18 able to find as the leverage provider for the
19 dividend arbitrage trading?

20 A I don't think they provided us with
21 a leverage provider.

22 Q Okay. And so is it fair to say
23 that the effort, they're seeking to find a
24 leverage provider, they're saying no one
25 other than Macquarie will touch it.

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1 actual transactions of securities or anything
2 else that would ultimately lead to the filing
3 of a reclaim.

4 A That an investor, be it a pension
5 fund or any investor, would purchase shares
6 on or before the annual general meeting of a
7 company located in Denmark, would pay for
8 those shares on a settlement date.

9 At the time of the acquisition of
10 the shares, the trade date would hedge the
11 transactions, hedge out the market risk, and
12 receive the dividend on the dividend payment
13 date.

14 And we worked with reclaim agents
15 to work on our behalf to file the requisite
16 forms and information that the tax
17 authorities in any jurisdiction would
18 require.

19 Q And the investors in this strategy
20 turned out to be pension plans.

21 Correct?

22 A Yes.

23 Q Okay. How -- in this strategy, how
24 was the pension plan going to finance its
25 purchase of the shares prior to the general

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1 assembly date?

2 A It wasn't going to finance the
3 purchase of the shares prior to the annual
4 general meeting.

5 Q Okay. But it was going to actually
6 enter into a trade prior to the annual
7 general meeting.

8 Correct?

9 A Yes.

10 Q All right. How was the pension
11 plan going to finance that purchase?

12 A On the settlement date, the pension
13 plan entered into a stock lending transaction
14 in which it lent out the shares that were
15 being settled, and the stock borrower had to
16 post collateral to the pension plan's
17 account.

18 And that was one source of funds
19 that could be used to acquire the shares.

20 Q With respect to the strategy that
21 involved Denmark, were there any other
22 sources of the financing for the purchase of
23 shares other than the stock lending
24 transaction that you just described?

25 A Yes.

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1 or shares at a date in the future for a price
2 that's agreed upon today.

3 Q Similar to the future at the time
4 that the trade is entered into, is there any
5 exchange of shares or money?

6 MR. BONGIORNO: Objection.

7 A Not in my experience.

8 Q Can you turn to what's been marked
9 Exhibit 2120?

10 MR. WEINSTEIN: Mark this as 2120.

11 (Whereupon the above mentioned was
12 marked for Identification.)

13 A (Witness reviewing.)

14 Okay.

15 Q Okay. This looks like it's an
16 account statement from Solo Capital for the
17 Michelle Investments Pension Plan.

18 Is that right?

19 A Yes.

20 Q All right. And that's one of the
21 plans that was opened -- or, I'm sorry, was
22 established in the -- in 2012 after Mr. Shah
23 sent that e-mail to you?

24 A Yes.

25 Q Okay. The -- do you see on the

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1 first page, in the middle of the page,
2 there's an account financial summary. It
3 says "Open Cash Balance," and it's got
4 a -- Euros, zero and DKK, zero?

5 A Yes.

6 Q All right. Did you understand DKK
7 was the currency in Denmark, and it would be
8 related to any transactions in Danish
9 securities?

10 MR. BONGIORNO: Objection.

11 A (Witness reviewing.)

12 Yes.

13 Q Did the Michelle Investments
14 Pension Plan deposit any capital into this
15 account at Solo before it started trading?

16 A I'm sorry. Before?

17 Q Before it started trading?

18 A (Witness reviewing.)

19 No.

20 Q Can you turn to Page 2, please? In
21 the middle of the page, it says there's a
22 trade date of August 12th for a purchase of
23 TDC securities.

24 Do you see that?

25 A No. I think you misread the date,

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1 Q That was your understanding, that
2 the plan negotiated because more was better
3 to get the cash required?

4 A Yes. In my experience, the more
5 days you have to settle the trade, the better
6 it is for the party obligated to pay.

7 Q Okay. And what was your
8 understanding as to why the seller of the
9 shares in this case would be willing to give
10 you more time to buy the shares than is the
11 standard settlement time in the country?

12 A Part of the negotiation on the
13 price at which the transaction would be done.

14 Q Wasn't the transaction
15 negotiated -- wasn't the price negotiated to
16 just be end-of-day market price?

17 A As I explained earlier, the seller
18 and the market pricing allocates a certain
19 amount of the profit of a dividend arbitrage
20 transaction to the other counterparties in
21 the deal, including the seller. So accepting
22 a certain share, or pricing and market terms,
23 they would have agreed to this "T plus 4."

24 Q Who undertook this negotiation with
25 the seller on behalf of the Michelle plan?

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1 A Back in April of 2012, following
2 the e-mail you mentioned, we had a call with
3 Solo in which we learned that they were
4 becoming a custodian, and terms of trades and
5 liquidity in the market and pricing in the
6 market was explained to us at that time.

7 And that included a share between
8 the seller and the buyer.

9 Q Okay. Were you part of that
10 discussion that you just described happened
11 with Mr. Shah?

12 A Yes.

13 Q Where did that take place?

14 A A telephone discussion.

15 Q Okay. Who was a participant?

16 A I was on the call, one or more of
17 my partners may have been on the call, and
18 representatives of Solo Capital were on the
19 call.

20 Q Okay. And during that call, the
21 Solo people said that they were becoming a
22 custodian?

23 A That they had become a custodian.

24 Q Okay. And so we saw a bunch of
25 e-mails earlier where they were trying to get

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1 other financial institutions to serve as
2 custodian.

3 Did they not get any that would
4 serve in that role?

5 A I don't know.

6 Q Okay. But it turned out that when
7 the dividend arbitrage trading began with
8 Denmark, it was going to be Solo Capital who
9 was the custodian for the trading?

10 A The discussions we had with Solo
11 initially were that the trading would be in
12 Belgium and those were the trades we did
13 initially.

14 Q Okay. And for the Belgian trades
15 initially, Solo Capital was going to be the
16 custodian?

17 A Yes.

18 Q And then, as we see in August of
19 2012, this plan started trading in Denmark.

20 Was Solo Capital --

21 A Yes.

22 Q Was Solo Capital the custodian as
23 well?

24 A Yes.

25 Q Okay. So tell me,

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1 what -- withdrawn.

2 What did the Solo folks tell you on
3 that phone call about how the trading would
4 work and the counterparties?

5 A They said that Solo had worked to
6 get approvals from the British regulators to
7 become a custodian, that they had hired legal
8 and compliance staff, securities finance
9 people, and that with customers who became
10 clients of Solo as a custodian, they would be
11 able to purchase shares from -- through
12 brokers, from the market, for other sellers
13 of the shares, and hedge those transactions
14 through their accounts at Solo for futures
15 contracts and, if needed, lend shares to a
16 borrower who would post collateral pursuant
17 to a standard stock lending agreement.

18 Q Okay. You mentioned earlier
19 that -- something about that there would be
20 negotiations with the sellers of the shares
21 about terms such as price and settlement
22 date.

23 What did they tell you on that
24 phone call about that?

25 A That the pricing -- market pricing

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1 Q Can you turn to the next page of
2 that account statement? It's got the Bates
3 number at the bottom, 125.

4 A Yes.

5 Q And do you see, there's four trades
6 on August 8th of 2012?

7 A Yes.

8 Q And are those derivatives for the
9 TDC stock?

10 A They are futures contracts.

11 Q Okay. And that's the hedging
12 transaction?

13 A Yes.

14 Q Okay. Do you know why it was
15 broken up into four transactions?

16 A No.

17 Q Okay. But ultimately, the four
18 combined are meant to sell futures in the
19 same amount of shares of TDC that was
20 purchased on August 8th.

21 Correct?

22 A Yes.

23 Q All right. And then, if you turn
24 to the next -- you know, another page over,
25 the Bates is 127, do you see that there's a

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1 transaction on August 14, 2012?

2 The transaction type is "SL" and
3 it's with Aquila (Cayman) as the
4 counterparty?

5 A Yes.

6 Q And is this the stock lending piece
7 of the transaction?

8 A Yes.

9 Q Okay. And prior to working with
10 Solo, had you ever heard of Aquila (Cayman)?

11 A No.

12 Q Okay. Did you -- do you know
13 anything about that entity other than that it
14 entered into stock lending transactions with
15 your plan?

16 A Prior to the onboarding of other
17 entities that we worked with -- not pension
18 plans -- with Solo prior to onboarding, we
19 would have received due diligence information
20 about a stock lender.

21 I believe in certain circumstances,
22 on the advice of our lawyers, we asked them
23 to sign certain letters, Patriot Act letters,
24 AML letters, and I believe we would have
25 received that from this company.

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1 Q Okay. And the Patriot Act and AML
2 letters you're talking about are
3 certifications that they'll comply with
4 various, you know, anti-money laundering type
5 rules?

6 A That's my recollection.

7 Q Okay. Other than those letters,
8 did you receive any documentation in
9 connection with this due diligence regarding
10 a stock lender such as Aquila (Cayman)?

11 A We may have received information on
12 the owners or principals of the company. But
13 I don't recall specifically.

14 Q Okay. And was that -- you received
15 that in documentation, document form, or you
16 just verbally were told who the owners were?

17 MR. BONGIORNO: Objection.

18 A I don't recall.

19 Q Okay. Other than AML and Patriot
20 Act certifications, do you have any documents
21 regarding due diligence or information on any
22 of the stock lenders that were used,
23 including Aquila (Cayman)?

24 A No.

25 Q As you sit here today, do you know

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1 anything about that entity?

2 A No.

3 Q And so your -- the Michelle Pension
4 Plan lent out 322 million kroner worth of
5 stock to this entity, Aquila (Cayman).

6 Correct?

7 A We lent out 7,750,000 shares to
8 Aquila (Cayman) and received cash in exchange
9 as collateral.

10 Q Okay. And when you purchased those
11 shares, the initial amount of the purchase
12 was about 322 million kroner.

13 Correct?

14 A (Witness reviewing.)

15 Yes.

16 Q All right. And that was the market
17 price on August 8th of 2012?

18 A Yes.

19 Q All right. And when you purchased
20 it, it was just before the dividend date.

21 Correct?

22 A Yes.

23 Q All right. And then, August 14th,
24 six days later, that would be after the
25 dividend date?

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1 strategy from this time in 2012 through the
2 middle of 2015?

3 A Yes.

4 Q Okay. And with respect to each --
5 each time a pension plan purchased Danish
6 shares, there was a corresponding stock loan
7 transaction similar to what we just looked
8 at.

9 Is that right?

10 A Yes.

11 Q Okay. Were there other stock
12 lending counterparties besides Aquila
13 (Cayman)?

14 A Yes.

15 Q Do you recall which entities served
16 as stock loan counterparties?

17 A I'm sorry. Can you repeat that,
18 please?

19 Q Do you recall which entities served
20 as stock loan counterparties for some of the
21 other transactions?

22 A No, I do not.

23 Q Okay. Prior to entering into stock
24 lending transactions with those other
25 counterparties, had you heard of any of them

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1 before the deal?

2 A No.

3 Q And did you do any due diligence on
4 any of them, other than obtaining an AML and
5 Patriot Act certificate?

6 A It would have been the same due
7 diligence that we've previously discussed.

8 Q Okay. And that entailed getting an
9 AML certificate and a Patriot Act
10 certificate.

11 Correct?

12 A In certain cases. I'm not sure we
13 did it in all cases.

14 Q Okay. But beyond that, whether you
15 did that or not, there was no other aspect of
16 the due diligence on the stock lending
17 counterparties.

18 Correct?

19 A Correct.

20 Q Can you turn to what's been marked
21 Exhibit 2160? It's in Binder 2.

22 (Whereupon the above mentioned was
23 marked for Identification.)

24 MR. BONGIORNO: Major progress.

25 MR. WEINSTEIN: Unfortunately,

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1 MR. BONGIORNO: Objection.

2 A It was based on liquidity
3 information, it was based on dividend
4 information, based on our willingness to
5 enter into certain transactions or avoid and
6 skip certain transactions if the
7 profitability was not significant enough for
8 us. So it was a profitable transaction,
9 which is why, starting in 2008, we decided we
10 should explore and work with leading
11 institutions and law firms to be able to
12 execute this particular type of transaction.

13 Q So when the Michelle plan started
14 to trade Danish securities in August of 2012,
15 we saw that the plan had not deposited money
16 into the account.

17 How was it able to execute that
18 initial trade?

19 A Through funds that it received,
20 either income on securities or through the
21 stock lending agreements and stock loans it
22 entered into, it was able to arrange for and
23 pay for those shares on settlement date.

24 Q And so, if the plan had not put
25 money into the account before that trade, and

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1 been paid. So it was less than \$24 million.

2 Q Well, did the plans or the
3 partnerships receive any monies after the
4 date of this e-mail?

5 A Possibly, but I don't -- I don't
6 recall.

7 Q Okay. Do you know how much you
8 ended up making combined between the
9 partnerships and the pension plans?

10 A Between 20 and \$24 million.

11 Q Okay. Do you know how much you
12 ended up making from the Argre era
13 partnerships and pension plans?

14 A I don't recall that amount.

15 Q Do you have a ballpark figure for
16 that time period?

17 A Between ten and \$20 million.

18 Q Can you turn, please, to
19 Exhibit 2271, which I'm pretty confident will
20 be the last exhibit in the last binder?

21 MR. WEINSTEIN: Mark this as 2271.

22 (Whereupon the above mentioned was
23 marked for Identification.)

24 Q Are you familiar with this exhibit?

25 A (Witness reviewing.)